

REMARKS

Status of Claims and Amendment

Claim 6 has been amended. Claim 6 is the only pending claim being examined in the application. Claims 1-5 are withdrawn as being drawn to a non-elected invention. Claim 6 is rejected.

Claim 6 has been amended to even further clarify the claimed invention by including the recitation “consisting essentially of theanine, genisteine, L-carnitine and at least one active ingredient selected from the group consisting of caffeine and catechin, wherein the theanine, genistein, L-carnitine and the at least one active ingredient are each present in an amount of 0.0001 wt% to 20 wt% of the total weight of the composition, wherein said composition removes cellulite by reducing the activity of glycerol-3-phosphate dehydrogenase (GPDH).” Support for the amendment to claim 6 may be found throughout the specification, for instance, at Experimental Examples 5 and 6, Example 7, and Example 8 at pages 14-19, Figs. 6 and 7, and page 7, lines 13-16.

No new matter is added.

Request for Continued Examination (RCE)

Applicants thank the Examiner for acknowledgement of the RCE and for entering the Amendment filed August 29, 2007.

Withdrawal of Rejections

Even though it was not expressly indicated in the Office Action, Applicants thank the Examiner for withdrawing the previous rejections under 35 U.S.C. §103(a).

Response To Claim Rejections Under 35 U.S.C. § 112

Claim 6 is rejected under 35 U.S.C. §112, second paragraph, as being allegedly indefinite because the phrase “and catechin remove cellulite” is unclear. The Office Action asserts that it is unclear whether the remove intended modifies only catechin or other ingredients in the claim, and it is unclear whether the phrase “catechin remove cellulite” implies a certain type of catechin.

In response, Applicants submit that claim 6 prior to the present amendment clearly defines what Applicants consider to be the claimed invention. However, solely to advance prosecution of the present application, claim 6 has been amended to include the recitation “wherein the theanine, genistein, L-carnitine and the at least one active ingredient are each present in an amount of 0.0001 wt% to 20 wt% of the total weight of the composition, wherein said composition removes cellulite by reducing the activity of glycerol-3-phosphate dehydrogenase (GPDH).”

Accordingly, reconsideration and withdrawal of the rejection under §112, second paragraph, is respectfully requested.

Response To Claim Rejections Under 35 U.S.C. § 102

Claim 6 is rejected under 35 U.S.C. §102(b) as anticipated by Ekanayake et al. (H1628; “Ekanayake”).

It appears the Office Action’s position is that the claimed anti-cellulite composition is an intended use of the claimed components because the “remove cellulite by reducing the activity of glycerol-3-phosphate dehydrogenase (GPDH)” is an intended use which fails to materially or

physically limit the structure of the composition so that if the composition of the prior art can perform such a use, then it meets the claim.

In this regard, the Office Action states that Ekanayake teaches a composition of tea extract comprising of theanine, catechins or flavanols to anticipate claim 6.

Applicants submit that Ekanayake does not inherently or expressly disclose the presently claimed anti-cellulite composition.

Applicants note that Ekanayake is directed to a process of producing a tea extract with reduced bitter and astringent flavors and low levels of polymerized or oxidized flavanols. (See Abstract of Ekanayake). Ekanayake discloses at column 1, lines 62-63 that the tea extract includes caffeine, theanine, and flavanols. The flavanols are defined in Ekanayake at column 3, lines 26-32 to mean catechin, epicatechin and their derivatives. In addition, Ekanayake discloses that the “amount of theanine, catechins or flavanols in the tea extracts and beverages...can vary” and the “ratio of caffeine to flavanols in the tea extracts...is preferably from about 1:1 to about 1:30, more preferably from about 1:1 to 1:10, still more preferably from about 1:2 to about 1:5.” (See column 6, lines 54-59 of Ekanayake).

However, Ekanayake does not expressly or inherently disclose genistein (an isoflavone) or L-carnitine (an essential nutrient). In contrast, the presently claimed anti-cellulite composition consists essentially of theanine, genisteine, L-carnitine and at least one active ingredient selected from the group consisting of caffeine and catechin, wherein the theanine, genistein, L-carnitine and the at least one active ingredient are each present in an amount of 0.0001 wt% to 20 wt% of the total weight of the composition, wherein said composition removes cellulite by reducing the activity of glycerol-3-phosphate dehydrogenase (GPDH). For example, the present specification, at Experimental Examples 5 and 6, Example 7, and Example 8 at pages 14-19, and Figs. 6 and 7, shows that the compositions of the present invention having the most significant effect in

slimming and firming all contain the components theanine, genistein, and L-carnitine as the essential components along with both or a variation of, caffeine and catechin.

Accordingly, reconsideration and withdrawal of the rejection under §102(b) is respectfully requested.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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